

1172
No. 3177

IN THE 1172
**UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PUGET SOUND NAVIGATION COMPANY, a
corporation,
Appellant.

vs.

CANYON LUMBER COMPANY, PORT
BLAKELY MILL COMPANY, and GUS
SMITH and CECILIA SMITH,
Appellees.

Apostles on Appeal

UPON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON,
NORTHERN DIVISION

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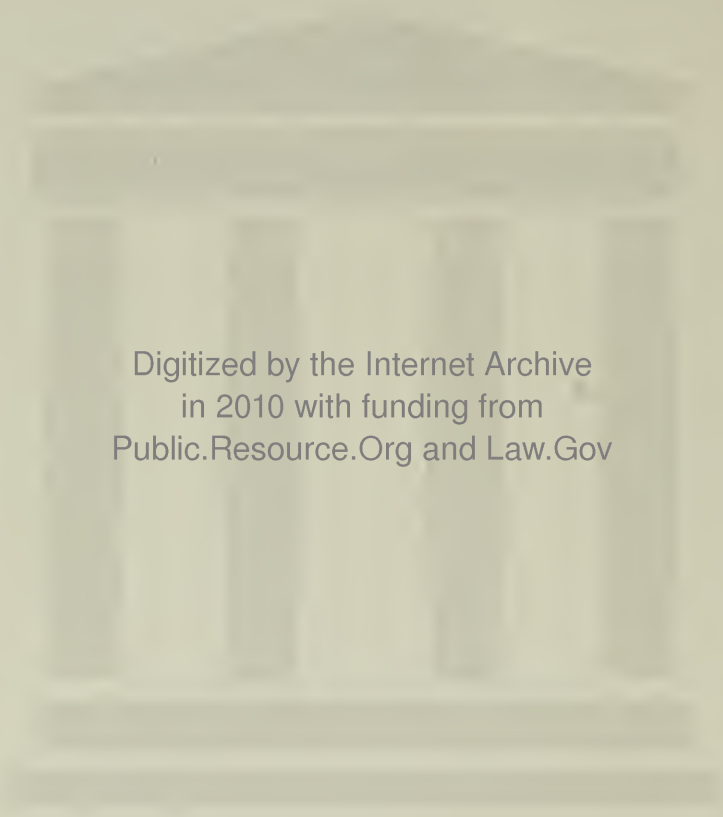
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*United States District Court, Western District of
Washington, Northern Division.*

No. 3501

CANYON LUMBER COMPANY,

Libelant.

vs.

STEAMSHIP "INDIANAPOLIS," Etc.,

Respondent.

PORT BLAKELY MILL CO.,

Intervening Libelant.

PUGET SOUND NAVIGATION COMPANY,

Claimant.

TUG "KLUCKITAT," Etc.,

Respondent on Cross-Libel of Claimant.

GUS SMITH and CECILIA SMITH, his wife,

Claimants of "Klickitat."

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pellees, Gus Smith and Cecilia Smith,
64 Haller Building, Seattle, Washington.

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

IN ADMIRALTY

No. 3501

CANYON LUMBER COMPANY,

Libelant.

vs.

STEAMSHIP "INDIANAPOLIS," Etc.,

Respondent.

PORT BLAKELY MILL CO.,

Intervening Libelant.

PUGET SOUND NAVIGATION COMPANY,

Claimant.

TUG "Klickitat," Etc.,

Respondent on Cross-Libel of Claimant.

GUS SMITH and CECILIA SMITH, his wife,

Claimants of "Klickitat."

STIPULATION RE RECORD ON APPEAL

IT IS HEREWITH STIPULATED between the proctors for the respective parties in this cause that the clerk of this court, in making up the record on appeal, may, after the caption of the cause and the addresses of counsel, insert the following state-

ment in lieu of all claims, pleadings, bonds, etc., filed prior to the entry of the final decree.

IT IS FURTHER STIPULATED that the said statement together with the transcript of the evidence and the oral decision of the court, hereunto attached, and the exhibits on file in the cause, shall be taken to be a sufficient record on appeal of all proceedings taking place prior to the entry of final decree.

DONE this 7th day of June, 1918.

HASTINGS & STEDMAN,
Proctor of Canyon Lumber Co., Libellant, and Port Blakely Mill Co., Intervening Libellant

BRONSON, ROBINSON & JONES,
Proctor for Puget Sound Navigation Co., Claimant of S. S. Indianapolis and Cross Libellant against "Klickitat"

ROY L. CADWALLADER,
Proctor for Gus Smith and Cecilia Smith, Claimants of the "Klickitat"

STATEMENT

This cause was instituted by libel of the Canyon Lumber Company and intervening libel of Port Blakely Mill Company, both filed on December 23, 1916, against the S. S. Indianapolis. The Puget Sound Navigation Company claimed the respondent vessel and released it by bond to the marshal on which bond Joshua Green and C. H. J. Steltenberg were sureties.

The libellant and intervening libellant alleged in substance that the Canyon Lumber Company, libellant, owned the scow "Dorothy D", which laden with lumber belonging to the intervening libellant, Port Blakely Mill Company, was being towed from Port Blakely to Pier "2" in Seattle by the tug Klickitat on the morning of October 20, 1916. That while proceeding through a thick fog and at less than one-half speed and with all due precaution, the said barge was run down by the S. S. Indianapolis at about 7:07 A. M. That the said Indianapolis was proceeding at the immoderate rate of speed of about fifteen knots or more per hour; that she cut through the said scow, slicing off the port corner, thereof, a wedge shaped piece about 7x70, and spilled a large portion of the scow's cargo of lumber into the bay. That having done so, she proceeded on her course without stopping or laying to. The damage to the libellant was alleged to be \$2275.00 and to the intervening libellant, \$236.10.

On September 21, 1917, the claimant, Puget Sound Navigation Company, filed its answer denying the allegations of negligence, and denying the allegations as to the amount of damage for want of knowledge and information. At the same time, and with permission of the court, it filed a libel against the Klickitat under Admiralty Rule 57, alleging that said tug was in truth and fact responsible for the collision. Gus Smith and Cecilia Smith claimed

the tug and released her by bond with American Surety Company as surety. Subsequently they filed a general denial and set up affirmative allegations as to the fault of the Indianapolis, substantially the same as were formerly set out by the libellant and cross libellant.

At the opening of the trial, which took place before the Hon. Jeremiah Neterer on March 27, 1918, the proctors for the respective parties, stated to the court that it was agreed among them that the amounts of the libellant's and of the intervening libellant's loss were as stated in the pleadings, and that it was also agreed that in view of the general allegations of fault in the pleadings of all the parties, and of the triangular nature of the case, that each of the parties might introduce such evidence of fault as it desired, the court to determine at the close of all the evidence upon whom the loss should fall. At the close of all the evidences, the proctor for the Puget Sound Navigation Company admitted that the evidences showed that the Indianapolis was at fault but contended that the evidences also showed that the Klickitat was also guilty of fault contributing to the collision in that, having regard to the nature of her tow and having regard to the time and place of towage, she was improperly and insufficiently manned, and in that she had no proper look-out and particularly in that she violated rule 16 of the Inland Rules by going at an immoderate speed and

by failing to stop her engine when she heard the whistle of an approaching vessel, substantially dead ahead. On these grounds, the Puget Sound Navigation Company contended that the damages of the libellant and the intervening libellant should be assessed against the S. S. Indianapolis and the tug Klickitat equally. These contentions the court denied and on April 1, 1918, entered a final decree against the Puget Sound Navigation Company, and stipulators on its bond, for the whole amount of damages.

The foregoing Stipulation and Statement, to which was attached the following Transcript of Evidence and Oral Decision of the court were filed in the United States District Court, of the Western District of Washington, June 7, 1918.

FRANK L. CROSBY, Clerk.

By ED. M. LAKIN, Deputy.

*In the United States Court, Western District of
Washington. Northern Division.*

No. 3501

CANYON LUMBER COMPANY,

Libellant.

vs.

S. S. "INDIANAPOLIS"

Respondent.

This cause coming on regularly for hearing on this March 27th, 1918, at the hour of ten o'clock a. m. before the Honorable Jeremiah Neterer, Judge, the libellant appearing by its proctors, Messrs. Hastings & Stedman, and the respondent appearing by its proctors, Bronson, Robinson & Jones, and Gus Smith and Cecilia Smith, claimants of Klickitat by Roy L. Cadwallader, their proctor, the following proceedings were had and testimony taken, to-wit:

OLIVER D. HOUCHEN, produced as a witness on behalf of libellant, being first duly cautioned and sworn, testified as follows:

Q. (MR. STEDMAN) State your full name.

A. Oliver D. Houchen.

Q. What was your occupation in October, 1916?

A. I was master of the tug "Klickitat."

Q. Licensed?

A. Yes sir.

Q. How long have you been a master of tugs?

A. I have been master of the tug "Klickitat" since April 19, 1911.

Q. You had experience before that?

A. Yes.

Q. You are now master of a tug?

A. Yes.

Q. You own your own tug?

A. Yes; I am operating my own tug.

Q. Now, on the morning of October 20th, state to the court the circumstances of your bringing the "Dorety D." to Port Blakeley.

A. October 20, 1916, I left Port Blakely about twenty minutes of five with the "Dorety D." and also two floats—in the morning—a. m.—and I had the "Dorety D." behind on the tow line, and the two floats that I had were one behind the other one, and they were towed behind this "Dorety D.", and I left Port Blakely at the time stated on the way to Seattle.

Q. What was the weather then?

A. The weather was clear that morning. You could see lights at a great distance. It was a very clear morning. I passed out of Port Blakely on my way to Seattle and went north of the Blakeley Rocks, leaving them on my south side, going to the north of them, and then I steered by the compass on the "Klickitat" northeast by east, half east. Now, that course should bring me into Seattle according to the way the tide was running that morning, it would bring me into Pier 2, that is a straight course, and as I came into Seattle I came up close

to the buoy; I was in between the buoy and Luna Park, half way between. That course brought me in there, and I generally steered that kind of a course in approaching Seattle to be out of the way of passing steamers, to keep on the inside, as all steamers generally pass to the north of the buoy; and when I got abreast of the buoy the weather began to get foggy; a kind of fog bank settled down and I began to blow my fog signal, one long and two short whistles, signifying that the boat was coming with a tow. Now, I blew those whistles a little bit oftener than what we generally do because of the position I was in and boats passing backwards and forwards, there would be no difficulty in their knowing that there was a boat coming with a tow.

Q. What whistles did you blow?

A. One long and two short.

Q. At what interval?

A. About thirty seconds. And after I had passed by some little time I heard a boat whistling somewhere in the fog ahead, and I heard her blow several whistles, and all at once I seen the "Indianapolis."

Q. You say "several whistles," what kind of whistles?

A. One whistle of a small whistle. I was looking for a small tow boat—seemingly from the sound of the whistle I thought there was some small boat coming. He was sounding his signals on the small

whistles, and I seen the "Indianapolis" coming out of the fog some three or four hundred feet distant, and he immediately blew his two whistles, signifying that he would pass me to his starboard side—also on my starboard side—and I immediately answered him with two whistles.

Just previous to this I had signalled my fog whistle, indicating that I had a tow. And within just a few second he was directly abreast of me and going very fast, seemingly at full speed. And the mate, or somebody upon the boat—I don't know that it was the mate or the lookout—I heard him distinctly signal to the master or the man at the wheel in the wheelhouse, that there was a scow directly ahead and to keep to port. But, seemingly, they made no effort to stop or change their course whatever, but proceeded right on, and the course that she had would cut my tow line about two hundred feet astern of the "Klickitat" and hit the scow on the port corner, passing on thru the scow and thru the lumber and seemingly as if it were nothing, went right on right thru the side of the scow and hit one of the floats and turned it upside down, and the last I seen of him he was going full speed, and after that I never saw him any more. He never stopped for any assistance.

Q. Did he pass out into the fog again?

A. Yes sir. He kept right on going on his

course, on towards Tacoma, that was the way he was bound.

Q. What did you do then?

A. I immediately backed up and took in the tow line and went alongside the wreckage, and kept on sounding my fog whistle so that other boats would not be apt to run into it, and it was very thick, and of course it was my duty to stand by and see that somebody else did not run into it. I stayed there until some time about a quarter after eight and the fog began to rise. It got clear again and I went on into Seattle and made a report of it in an attempt to get another boat to assist in picking this lumber up, and we afterwards surrounded the lumber with boomsticks, and that same evening we got it back to Port Blakeley, what was left of the scow and the lumber.

Q. Whereabouts did she hit the scow?

A. She hit the scow about six feet from the port corner.

Q. The port forward corner?

A. The port forward corner, and passed on thru the scow.

Q. And how long a cut did she make thru the scow?

A. Approximately seventy-two feet.

Q. You measured it?

A. Yes sir. It took the side right out of the scow.

Q. And what did it do to the lumber?

A. Of course, well it broke a lot of it up and scattered it all over—of course, when the scow sank it floated all over and a lot of it was broken up.

Q. The scow did not sink entirely?

A. Well, the scow was submerged. You could not see the scow whatever. You could see a part of the top of the lumber afloat.

Q. Was assistance obtained from Lillico?

A. Yes, I hired one of the Lillico's boats to come there, and went to Sewager & Nettleton's and got some boom sticks and I came out with the boom sticks and then I went out and assisted him and we surrounded the lumber.

Q. He charged the mill company twenty dollars for that?

A. Yes, I know he was there quite a long time.

CROSS EXAMINATION

Q. (MR. ROBINSON) What time did you leave Port Blakeley?

A. Four forty a. m.

Q. What time did you pass Blakely Rock?

A. It takes thirty minutes to get out there with that kind of a tow, that would be 5:10.

Q. Do you know what time you passed the bell buoy?

A. Yes sir.

Q. What time?

A. 6:40.

Q. When did this collision occur?

A. October 20, 1916.

Q. What time?

A. What time?

Q. At what time?

A. About seven minutes after seven.

Q. What speed could you make with that tow that morning?

A. Well, we were making a little less than four miles an hour.

Q. A little less than four miles an hour?

A. Yes.

Q. You mean statute miles?

A. Yes.

Q. I think you said that you were a little past the buoy when you heard the whistle of the boat ahead of you somewhere?

A. That was some little time after we were past there—oh, that was about twenty or twenty-three minutes after we had passed the buoy.

Q. Around about seven o'clock then?

A. Yes; a few minutes after seven before I heard any whistles.

Q. About how many minutes past seven?

A. Well, between three and five minutes after.

Q. How long did you hear those whistles before the collision happened?

A. Not more than about three or four minutes—about three minutes.

Q. What speed do you think you were making at the time you first heard those whistles?

A. Well, I was going at the same rate of speed all the time, all the way across.

Q. About four miles an hour?

A. Yes, a little less than four miles an hour.

Q. When you heard the whistles you heard several of them between the time you first heard them and the collision?

A. Yes.

Q. How long have you been navigating around this harbor here?

A. Well, I have been working around here since 1909.

Q. You knew the Tacoma boat came out about that time, didn't you?

A. Yes.

Q. You also knew then as you do now, don't you, that she uses her small whistle in a fog?

A. No sir.

Q. That whistle is a loud, clear and adequate whistle, is it not—you have heard it since, haven't you?

A. I don't recall of having heard that whistle since. I have noticed that whistle up on the smoke-stack there, but I do not recall of over hearing it only at that time.

Q. You heard it quite plainly that morning?

A. Yes, I heard it plain enough that morning.

Q. Did it appear to be blowing at regular intervals?

A. Well, it seemed to be quite a long time in between the whistles.

Q. How long?

A. Anywhere from a minute to a minute and a half; probably a minute and a half.

Q. How many of them did you hear, do you think?

A. Not more than three.

Q. How large a vessel is the "Klickitat"?

A. Forty-six feet overall, eleven foot beam.

Q. Do you know how long a tow line you had that morning?

A. Yes, three hundred feet.

Q. How long was the scow?

A. The scow was one hundred nineteen feet.

Q. So, if I understand your testimony correctly, you were coming along here at about four statute miles per hour and you heard those whistles out ahead of you somewhere—they seemed to be about forward?

A. Yes, somewhere.

Q. And then the next thing that happened you saw the "Indianapolis" in sight?

A. Yes.

Q. You were still going about that same speed—what did you do then Captain?

A. When I saw him he blew his whistle right immediately; I answered him and now, in order to—

Q. What did you say about his blowing his whistle?

A. He blew two whistles to pass on my starboard side, and I immediately answered. Now, in order to let him pass on that side I had to pull over. I had to bring the boat over to port to get out of his way.

Q. Were you pointing right at him, do I understand you to say?

A. Well, he was bearing down on me kind of from his starboard bow. He was just exactly over my port bow. In passing correctly he should have blown one whistle, according to the positions that we were in. If he had blown his one whistle and passed to the port side—

Q. Did you see him at the time you heard the whistles?

A. Yes sir, I could see him plainly.

Q. How far was he away?

A. Somewhere between three and four hundred feet; probably farther than that. Distance is hard to judge on the water, especially in a fog.

Q. You say you pulled over?

A. Yes.

Q. And kept on going?

A. Yes.

Q. I suppose you were still going at the time of the impact?

A. No; just before he hit the scow—well, it might be just about the same time I saw he was going to hit her I stopped the engine.

Q. Up to that time you had not stopped tho?

A. No, I was going right on; the scow was drawing directly behind the boat.

Q. Three hundred feet back?

A. Yes.

Q. How many men did you have on that boat, Captain?

A. I had one man for an assistant, a deckhand.

Q. Where were you?

A. I was in the pilothouse.

Q. Where was the other man?

A. He was in the pilothouse also.

Q. He was in the pilothouse also?

A. Yes sir.

Q. Now, you say you did not hear the whistles until about three minutes before you saw the boat—the “Indianapolis”?

A. Well, yes, about three minutes, or thereabouts—it could not have been more than that.

Q. Were you listening for whistles?

A. Yes, I had my head out thru the window and kept my ear wide open.

Q. Doesn't it seem strange to you, Captain, that you would not have heard her all the way across

the Bay from after the time she left the dock?

A. No sir, you would not hear that whistle thru the fog that far. Take it in foggy weather, a whistle does not sound very far sometimes, especially a light whistle.

Q. Do you mean to charge that this is an inadequate whistle for a fog?

A. No sir, I do not mean to charge that it is an inadequate whistle for a fog, but you don't hear a whistle very far thru the fog.

Q. What kind of a whistle have you got?

A. An ordinary air whistle, the same as the rest of those gas boats. We have one hundred fifty pound pressure on the tank, and the whistle can be heard a good long distance.

Q. You said something in your testimony about somebody out on the bow of the "Indianapolis" signalling back to the pilothouse. What was that—I didn't quite catch it.

A. When he was almost directly alongside of the boat, or alongside of the tug, I heard the mate, or the lookout there signal to the person in the pilothouse to swing to port, that the scow, that there was a scow directly ahead.

Q. You say that you heard him signal; what do you mean; did you hear him say those words?

A. Yes sir, he says "Better swing to port—scow directly ahead."

Q. Do you know where he was standing?

A. Yes sir, he was standing right up close to the bow, within about ten or fifteen feet of the stem somewhere.

Q. Not near the pilothouse?

A. Well, I could not say for sure just what position; I know that I saw him up there and I heard him holler out to the Captain, or whoever was up in the pilothouse. I know there was a look-out up there. I would not say just what part of the boat he was on—somewhere between the pilothouse and the bow of the boat.

Q. That tow line you had, what size line is that?

A. Four and a half inch in circumference.

Q. And two men on your boat handled that tow line?

A. Yes sir, one man can handle it nicely.

Q. One man could shorten it up if on occasion it become necessary?

A. Yes, very easily.

Q. How do you handle the engine on your boat—it is a pilothouse control?

A. Yes sir, a pilothouse control.

Q. How does it operate; for instance would the boat necessarily be going ahead when you could hear the exhaust?

A. Sir?

Q. If you shut off your engines could you dis-

connect your engines from your propeller so that the engines can run and the propeller not turn?

A. Yes, certainly, it has a clutch on her.

Q. So the fact that one would be hearing your exhaust, would not necessarily mean that you were going ahead?

A. No sir.

Q. When did you run into the fog?

A. Well, just when I was off the buoy there; it was about a quarter to seven or twenty minutes to seven or thereabouts.

Q. Was it very foggy at that point?

A. The fog laid in banks that morning; there would be a thick bank of fog here, and it would give out and you would be out in the clear.

Q. There were some clear streaks on this side of the Bay?

A. Yes, in towards the Harbor. You would go right along thru the fog and you would not hear a thing, and all at once you would run out into a clear space.

Q. It was a streaky fog then?

A. Yes.

Q. How was it at the point where the collision happened?

A. I was in the clear. It was very clear where I was at the time he ran into the scow. I could see the scow very plain and I could see the "Indianapolis."

Q. You had come thru some thick fog on the way there?

A. Yes.

Q. I understand then that you maintained an even speed right across?

A. Yes.

Q. From the time you left Port Blakeley until the "Indianapolis" got up right abreast of you?

A. Well, until he got up to the scow.

Q. Until he had passed you even?

A. Yes.

Q. And you went thru those fog banks and thru those clear spots, at the same speed?

A. Yes sir. That is very slow. A man could walk as fast as we were traveling.

Q. About four miles an hour?

A. Yes.

Q. Your idea in regard to that is that you were maintaining a moderate speed, within the rules?

A. Yes.

Q. And that was all that was required of you?

A. Yes.

REDIRECT EXAMINATION

Q. (Mr. Stedman). When you left Port Blakeley did you have lights?

A. Yes sir, all the lights were burning at that time, and also the lights on the tow.

Q. Were the lights burning on the scow at the time of the collision?

A. Yes sir; the lights were still burning on the scow.

Q. Did the "Indianapolis" come out of a fog bank towards you?

A. Yes sir, and, seemingly, a kind of fog bank in where he was, and he came kind out of the fog when I first saw him.

Q. He was blowing his fog whistles?

A. Yes sir.

Q. Whereabouts on the "Klickitat" is the pilot-house, or the wheel house?

A. The pilothouse is on the bow of the "Klickitat", at that time.

Q. Within six or eight feet from the bow?

A. Yes, about eight feet from the bow.

THE COURT: Was there lights on the scow?

A. Yes sir, there was the usual lights that we put on the scow, the ordinary lanterns, of course at the time the "Indianapolis" ran into her there was daylight then and the light would hardly be seen.

RECROSS EXAMINATION

Q. (Mr. Robinson). I understood you to say in your direct examination that the "Indianapolis" went right on at full speed and right thru the scow and kept on going—how long did you see her after she passed?

A. After he passed on out past the scow I did

not see him any more. I suppose when he hit the scow he kind of pushed the scow with him a little.

Q. Did you lose sight of the scow for a little while?

A. Yes.

Q. What did you say he didn't stop or slacken speed or anything—how do you know that?

A. Well, I could tell that he did not reverse his propeller or anything. The current from his wheel was pulling up underneath the stern and a great swell on the side of the boat four feet high, just the same as he does in clear weather. I could have reached out with a pike pole and touched him, he was that close—right alongside the boat.

Q. Is it not possible that you are mistaking his reverse motion for his going forward motion?

A. Sir?

Q. I say, is it not possible that you have mistaken his reverse motion for his going forward?

A. No sir. Any time you can see the propeller reversed you know the current from the wheel is setting back in underneath the boat. He never made no effort to stop at all, from what I could see. Of course after he passed on out into the fog there I do not know what he did out there—he may have made some effort to stop.

Q. Did you hear his whistle out there?

A. He just kept on signalling his one whistle.

I heard him whistle a couple of times after he passed me and that was all.

Q. Just one whistle?

A. Just one whistle.

Q. Those floats back of the scow, how large were they—and what were they, timbers or what?

A. They were two floats made up of boom sticks; they were to be used as a walk way between the shore and the construction of some of those new steamers.

(Witness excused).

CHARLES MELGARD, produced as a witness on behalf of Libellant, being first duly cautioned and sworn, testified as follows:

MR. STEDMAN: It is stipulated, may it please Your Honor, that the loss of the Port Blakeley Mill Company is \$271.19.

Q. State your full name.

A. Charles Melgard.

Q. What is your business?

A. At the present time I am plane man at Port Blakeley.

Q. What was your business and what were you doing in October 20th, 1916?

A. I was assistant on the tow boat "Klickitat."

Q. Under Oliver Houchen?

A. Under Oliver Houchen.

Q. How long had you been on her then?

A. I was on her two weeks altogether.

Q. How old are you?

A. Thirty-four years.

Q. Do you remember what time you left Port Blakeley on the morning of October 20th?

A. About 4:40.

Q. Did you have a scow in tow?

A. Yes sir, we had a scow and two floats.

Q. What was the name of the scow—the “Dorety D.”?

A. The “Dorety D.”

Q. Loaded with lumber, was she?

A. Loaded with lumber.

Q. And where were you bound for?

A. Seattle.

Q. What pier do you know?

A. Pier D, I think.

Q. Or Pier 2, was it?

A. Pier 2.

Q. What was the weather as you left Port Blakeley?

A. It was clear as we left Port Blakeley.

Q. When you got off Duwamish Head where did you pass the bell buoy—did you pass between the bell buoy and Duwamish Head?

A. I could not say exactly because I was down for breakfast at the time and I just came up a little before the accident.

Q. You came out a few moments before the accident?

A. Yes sir.

Q. What whistle or whistles were being blown on the "Klickitat"?

A. Oliver blew the regulation whistles—one long and two short blasts.

Q. Indicating that he had a tow?

A. A tow.

Q. How frequently were they being blown?

A. He blowed them pretty regular, I can't say, sometimes about thirty minutes between.

Q. Thirty minutes?

A. Or thirty seconds.

Q. Did you hear any fog whistles from the vessel approaching you?

A. Yes.

Q. How long before he was visible did you hear it?

A. About three minutes, I think.

Q. How far was the "Indianapolis" when you first saw her?

A. Well, that is pretty hard for me to judge on the water. I should say about three or four hundred feet.

Q. What if any signal did she give to you?

A. Well, as soon as he seen us he blowed two whistles to pass on the starboard side.

Q. What did Oliver do?

A. He answered with two whistles.

Q. Which side of you did she pass?—the starboard side?

A. On the starboard side, yes.

Q. How close aboard?

A. Well, she was pretty close when she was abreast of us.

Q. Did you see any signal or anything from the look-out on the “Indianapolis” or the man on the bow?

A. I seen a man on the bow of the “Indianapolis” thru the window in the pilothouse.

Q. Did you hear what he said?

A. I did not hear what he said because the window was shut on that side that I stood on, and Oliver was leaning out thru the other window.

Q. Talk louder.

A. I stood inside the pilothouse there and looked thru the window and I seen a man on the bow of the “Indianapolis” making some motion with his hand up to the Captain.

Q. What motion was it?

A. Some motion like this (showing) with his hand. I could not tell exactly when I was looking thru the window.

Q. You do not know how he motioned him to go?

A. I could not swear to that.

Q. How, after she passed you, what did the “Indianapolis” do?

A. Well, she went right by and we never seen her any more.

Q. Did she cross the tow line?

A. She crossed the tow line.

Q. What did she do to the scow, if anything?

A. She took the corner out of the scow.

Q. Did she stop?

A. No, she didn't stop.

Q. Could you tell if she passed by you if she was under way or whether she was reversed—whether she was going forward or engines reversed?

A. She was going ahead.

Q. The engines were going?

A. Yes.

Q. The wheel was going?

A. Yes.

Q. The propeller was going forward?

A. Yes.

Q. What did you do after the collision?

A. Well, we turned around and went back and stood by the scow.

Q. Did you keep sounding fog whistles?

A. Yes.

CROSS EXAMINATION

Q. (Mr. Robinson). Have you worked on tow boats much?

A. No sir, that was the first time I was on a tow boat.

Q. You had been on there about two weeks?

A. Yes.

Q. How much sea experience had you had up to that time?

A. Well, I had a little experience at home in the old country, in Norway.

Q. But you had not worked on a vessel over here at all?

A. No sir.

Q. And you had been there about two weeks?

A. Yes.

Q. And there were two of you on the vessel?

A. Yes.

Q. Yourself and the Captain, who just testified?

A. Yes.

Q. I believe you said you were down at breakfast when you passed the bell buoy out there?

A. Yes, I was at breakfast when we passed the bell buoy.

Q. And you came up a few minutes before the collision?

A. Yes.

Q. About how long?

A. About ten minutes before.

Q. What was the weather like when you came up?

A. It was kind of a fog.

Q. It was foggy when you came up?

A. A fog coming kind of in bunches then.

Q. When you came up from breakfast was the fog about the same as it was when the collision occurred, in density?

A. Not quite so dense, no.

Q. How far could you see at that time?

A. Well, I could plainly see the scow when I came up.

Q. Then you could see at least three hundred feet?

A. Yes.

Q. When you came up from breakfast?

A. Yes.

Q. How long had you been down there?

A. I think I was down there about a half an hour.

Q. You went down then before you passed the bell buoy and came up sometime this side?

A. Yes.

Q. This man you talked about making some signal on the bow of the "Indianapolis"; was that well up towards the stem, or right by the pilot-house, or where?

A. Well, some place between the stem and the pilothouse.

Q. Can you give me any idea how far it was from either point?

A. I could not say for certain—about half ways between.

Q. It was not right by the pilothouse window?

A. Not on top there—it was down on the lower deck.

Q. How much experience did you have in the old country as a sea man?

A. Once in a while—I didn't work at that steady, you know.

Q. What sort of work was it—was it towing or on a freight vessel or on a fishing vessel or what?

A. A freight vessel—steamers.

Q. Where was this?

A. In Christiania.

Q. Norway?

A. Yes.

Q. Can you give us some idea how much experience you had?

A. Altogether, about six months.

Q. How long ago was that?

A. Well, thirteen or fourteen years ago.

(Witness excused).

MR. STEDMAN: I do not remember whether Mr. Houchen made it clear in his testimony that they passed about half way between the bell buoy and Duwamish Head—I would like to ask him a question.

OLIVER D. HOUCHEN, recalled, testified as follows:

Q. Captain, I don't know whether I asked you or not, but if I did I will ask you to tell me again

how far those floats projected behind the scow—how far they tailed out behind?

A. Each of those floats were approximately eighty feet long and they were coupled close together.

Q. And coupled close to the scow?

A. Yes, just a short line in between them and the scow.

Q. And your boat was forty-six feet?

A. Yes.

Q. And three hundred feet of tow line?

A. Yes.

Q. And 119 feet of scow?

A. Yes.

Q. And two eighty foot floats coupled close together behind them—now how much did you say the scow was?

Q. That is 119 and the two eighty-foot floats behind that?

A. Yes.

Q. (Mr. Robinson). How long have you towed around here?

A. I have been towing around the Sound since 1909.

Q. Is it not customary when you come into the Harbor to shorten up the tow line of that length?

A. No sir, it is not, because most of the boats using tow lines—most of them use anywheres from four hundred and fifty or probably six hundred

feet of the tow line and lots of times they never take those up, because you will see them towing out in the Harbor with the towline right out, especially a log raft.

Q. Do you consider it good seamanship to come in with a tow of that length, a scow and those drags behind and everything, in a fog, into the Harbor?

A. Yes, because you are blowing that signal, and anybody approaching you, it makes no difference from what course they are coming, they know you have a tow and they must be on the lookout; they don't know whether you have a tow or a log raft. If the boat has a raft of logs behind, even if they shorten their tow line the raft of logs will probably be a thousand feet long.

Q. What is the towing signal?

A. One long and two short blasts.

Q. What do you mean by a long whistle?

A. Three seconds duration for the long one and somewhere about ten seconds for the short one.

MR. ROBINSON: That is all.

MR. STEDMAN: You made a marine protest on this?

A. Yes.

Q. First by affidavit and also extended it by marine protest?

A. Yes I did.

MR. STEDMAN: I offer this in evidence.

MR. ROBINSON: I am willing to admit that

the protest was made; the fact that the protest was made I think is admissible, but I do not think the protest itself is. I think the most it can show is that the protest was made, which I am willing to admit.

MR. STEDMAN: The authorities vary as to that, but perhaps it would show that the statement at the time it was fresh in his mind is the same as what it is now.

THE COURT: It may be admitted. I am not saying that the Court will consider the statement. The fact that the protest is admitted, perhaps, would answer every purpose.

MR. STEDMAN. The libellant rests. That is all. That is the case of the libellant and the intervening libellant, the Port Blakeley Mill Company.

HERE THE LIBELLANT RESTS.

HOWARD PENFIELD, produced as a witness on behalf of Respondent, being first duly cautioned and sworn, testified as follows:

Q. (Mr. Robinson). State your full name.

A. Howard Penfield.

Q. Captain Penfield you are a master mariner?

A. Yes sir.

Q. What license have you, and how long have you had it?

A. Puget Sound and tributaries and Puget Sound waters.

Q. How long have you had it?

A. Fifteen years.

Q. You have been going to sea how long?

A. All my life, thirty years.

Q. How old are you?

A. Fifty-seven in September.

Q. You were master of the steamship "Indianapolis" on the morning of this collision that we are talking about?

A. Yes.

Q. What time did you leave the Colman Dock?

A. 7:00 a. m., October 20.

Q. Where is the Colman Dock with reference to Pier 2?

A. It is north.

Q. North of Pier 2?

A. Yes.

Q. After she steamed into the Bay coming directly from the neighborhood of the bell buoy to Pier 2, what would your course be with reference to that?

A. Practically head-on.

Q. That is, because, I take it, that you go down to about Pier 2 in making the turn?

A. Yes.

Q. What was the weather like that morning?

A. Foggy.

Q. Can you describe it more particularly; would you say that it was a thick fog and very foggy or what?

A. Well, it was pretty thick.

Q. What time did you get on your course after leaving the dock?

A. 7:04.

Q. 7:04?

A. Yes.

Q. About what time did this collision occur?

A. About 7:07—it may have been 7:08.

Q. Or 7:07½?

A. Yes.

Q. At what point did it occur, how far off the dock, do you think?

A. Probably a mile! in the neighborhood of a mile.

Q. How were you going with regard to speed that morning?

A. We were making one hundred thirty-five revolutions.

Q. That would carry you along at a pretty good clip?

A. Yes.

THE COURT: About how many miles?

A. Very near fifteen miles an hour.

Q. (Mr. Robinson). Is that statute or nautical miles?

A. Nautical miles.

Q. About fifteen?

A. Yes sir.

Q. How much could the "Indianapolis" make

at that time if she were running full speed?

A. Practically the same.

Q. About the same?

A. Yes sir.

Q. What revolutions does she make when she is going full speed?

A. One hundred fifty-two.

Q. There must be some difference between one hundred thirty-five and one hundred fifty-two, is there not?

A. In regard to the revolutions?

Q. In regard to the speed.

A. Not materially, no sir.

Q. Were you blowing your fog whistle?

A. Yes sir.

Q. What whistle did you use for the fog whistle—you have two fog whistles?

A. We have a small whistle, yes sir.

Q. What can you say about the carrying powers of that whistle?

A. Well, it is a very shrill whistle, sharp and clear, and it carries a great distance—distinct.

Q. Have you ever been ashore and heard it for any considerable distance so that you can judge of the distance you can hear the whistle?

A. Yes.

Q. In what way?

A. Well, I have heard it where I live very often.

Q. How far would it be from the waterfront?

A. It is about a mile and three-quarters.

Q. That whistle is only used in foggy weather?

A. Yes.

Q. Were you in the pilothouse?

A. Yes.

Q. The windows down?

A. Yes.

Q. And the quartermaster with you?

A. Yes.

Q. Was there anybody ahead of you on the boat?

A. Yes.

Q. Who?

A. The first officer and the man on the lookout.

Q. Where was the first officer?

A. He stood directly in front of the pilothouse.

Q. Near the pilothouse?

A. Yes.

Q. Where was the other man?

A. He was practically in the same position on the other side, on the starboard side—the mate was on the port side.

Q. He was down on the other deck?

A. They were both on the boat deck.

Q. What was the first intimation that you got that there was something ahead of you that morning?

A. Three short toots of a whistle, I took it for a towing whistle.

Q. You took it for a towing whistle?

A. Yes sir.

Q. When did you hear that, do you think?

A. Well, that was about—it was in the neighborhood of 7:06½, or something like that.

Q. It was pretty shortly before the collision?

A. Yes sir.

Q. What did you do?

A. I stopped the engines.

Q. And what next?

A. Well, I blew the fog signal. I got no response and I blew it again—possibly five or six seconds between them—and I got no answer, and instead of a whistle I heard the exhaust from the gas boat.

Q. Where was the exhaust with reference to you?

A. Practically right ahead.

Q. Right ahead?

A. Yes.

Q. You heard the cross examination and some of the testimony here this morning?

A. A portion of it.

Q. Did you hear that portion with reference to your blowing a starboard passing whistle?

A. I blew a starboard passing whistle.

Q. You blew two whistles?

A. Yes.

Q. Why did you do that?

A. To pass the starboard. I saw him on the starboard bow.

Q. Did he answer that?

A. No sir.

Q. What were your engines doing when the collision took place, Captain?

A. They were reversed.

Q. What did you do after the collision?

A. After the collision I blew several times the fog whistle and I sent the mate down below to see if everything was all right, and then I proceeded on the way to Tacoma.

Q. Could you see the scow or any part of her at that time?

A. At that time, no sir.

Q. Did you hear any call or anything from the tug?

A. No sir.

Q. Did you know whether or not you had passed clear of the tug?

A. Yes.

Q. Did you see anybody on the scow?

A. No sir.

CROSS EXAMINATION

Q. (Mr. Stedman). Captain you knew you hit the scow, didn't you?

A. Yes sir.

Q. You cut a sliver off her?

A. Yes.

Q. Cut right thru her?

A. I don't know whether I went thru her or not. I took off the corner of the scow.

Q. You knew you hit her on the front port?

A. Yes.

Q. Near the port corner?

A. Yes sir.

Q. And you took a sliver about seventy or seventy-five feet long?

A. Yes.

Q. Now your berth at the Colman Dock is the south berth nearest the end of the dock?

A. Yes sir.

Q. It is where the Tacoma boats usually land?

A. Yes sir.

Q. In leaving Seattle, you, of course, backed out from your berth?

A. Yes.

Q. On what wheel?

A. On her regular wheel.

Q. To the port or the starboard—on what helm?

A. The helm is amidships.

Q. How far do you go in that direction?

A. I probably backed out only one hundred or one hundred and twenty feet.

Q. How long do you go on that course in a fog?

A. Backing out from the dock I generally back out until I lose sight of the dock.

Q. Did you lose sight of the dock this morning?

A. Yes sir.

Q. Then what course do you take?

A. Well, I put my helm hard-to-port and head half speed and slow sometimes.

Q. And you make a swing around to port?

A. Yes sir—around the port helm.

Q. Around to starboard?

A. Yes.

Q. You get about opposite Pier D, don't you?

A. Yes, in that neighborhood, off Pier 1 or Pier D.

Q. Pier D is perhaps, three or four blocks south of the Colman Dock?

A. Yes.

Q. And then you swing around so as to go on your course?

A. Yes.

Q. Your course is outside and to the north of the bell buoy?

A. Practically at the bell buoy. I make the bell buoy very close.

Q. You do not aim to be to the south or inside the bell buoy, do you?

A. Sometimes I am.

Q. What was your course this morning?

A. Well, it was my regular course.

Q. Your regular course is at the bell buoy or just outside of it?

A. Yes; sometimes we are carried a little inside.

Q. It depends on the tide?

A. The tide don't affect her a great deal—a little bit.

Q. At the time of this collision you were going at substantially full speed?

A. At the time of the collision, no sir.

Q. How many revolutions were you making?

A. At the time of the collision?

Q. Yes.

A. I was reversed.

Q. How long had you reversed at the time of the collision?

A. Before the collision?

Q. Yes.

A. I had been backing, probably, well, I could not say—quite a space of time; maybe six or seven or eight seconds, or something like that.

Q. Six or seven or eight seconds?

A. In that neighborhood.

Q. You had no difficulty in going thru the scow, did you?

A. In going thru?

Q. It did not retard your progress any to speak of?

A. I don't know about that.

Q. Well, you went right ahead on your course after that, didn't you?

A. No sir.

Q. Did you lay-to?

A. Yes. I came to a dead stop.

Q. Did you come back to where the scow was?

A. No sir.

Q. The scow was out of sight?

A. Yes.

Q. You came to a stop to see whether you were hurt or not?

A. Yes sir.

MR. STEDMAN: That is all.

(Witness excused).

PETER WICK, produced as a witness on behalf of Respondent, being first duly cautioned and sworn, testified as follows:

Q. (Mr. Robinson). Mr. Wick, you are a licensed mariner?

A. Yes sir.

Q. You are the mate on the "Tacoma" at the present time for the Puget Sound Navigation Company?

A. Yes sir.

Q. At the time this collision occurred you were mate on the "Indianapolis" were you not?

A. Yes sir.

Q. How long have you been going to sea?

A. About thirty years.

Q. Where were you when the "Indianapolis" pulled out across the bay that morning?

A. I stood on the starboard side on the upper

deck in front of the pilothouse, six feet from the pilothouse.

Q. Were you giving fog signals?

A. Yes sir.

Q. What was the first seen or heard of this matter that afterwards proved to be the scow?

A. I heard a gas boat somewhere ahead giving out whistles—it sounded like a discharge.

Q. How many times?

A. I heard it once.

Q. And what happened next?

A. The next I heard the exhaust.

Q. Where was that with reference to you?

A. Well, it was—it sounded as if it was a little on the starboard bow, mostly ahead—nearly right ahead, and then I saw him.

Q. Then you saw him shortly after that?

A. Yes sir.

Q. How long was it between you heard the whistle and the time you saw the “Klickitat”?

A. It must have been about one minute I guess.

Q. And where was he when you saw him?

A. I saw him right down on the starboard side.

Q. Abreast of you?

A. Abreast of where I was standing.

Q. Abreast of where you were standing?

A. Yes.

Q. About how far away?

A. I don't know; it must have been ten feet away or twenty feet; he was very close in.

Q. Did you call the attention of the Captain to any of those things you saw or heard?

A. I reported when I saw the scow.

Q. When you saw the scow?

A. Yes.

Q. You have been in the courtroom here all the morning?

A. Yes.

Q. You heard the testimony that somebody told the Captain to go to port; did you do that?

A. No sir. I gave him no directions at all. I said "There is a scow right ahead."

Q. Tell us, if you know, what the Captain did when you reported the scow, or do you know?

A. He answered that he saw it. Or said "All right" or something. I said "There is a scow right ahead." I don't know what he did.

Q. What do you know as to whether or not he gave any signals to the engine room?

A. Well, I heard the bells ringing.

Q. Do you know what bells they were?

A. No sir, I could not tell.

Q. Do you know or had you any way of telling whether or not the "Indianapolis" slackened speed between that time and the time she hit the scow?

A. Yes.

Q. How could you tell that?

A. You can easily feel that when you are standing out on the open deck in the fog, whether she is going full speed or not, and you can feel every motion of the boat.

Q. Do you know whether or not your boat stopped after she passed thru this scow?

A. She stopped dead after we passed thru the scow.

Q. Did you stay around there any length of time, or what did you do?

A. Not very long. We stood around two or three minutes, I guess and then started up again.

CROSS EXAMINATION

Q. (Mr. Stedman). The first you saw of the tug was when she was right alongside you?

A. Yes.

Q. And about ten feet from you?

A. Well, maybe it was twenty.

Q. Pretty close to you?

A. Very close.

Q. It seemed like you could touch her with a pike pole?

A. Not quite that close.

Q. You reported to the Captain that there was a scow in tow?

A. Yes.

Q. And then the Captain gave the signal to reverse the engines?

A. Well, I don't know what signal he gave.

Q. But the signals he gave, he gave after you reported the scow?

A. I don't know all the signals that were given, but I heard him give some signals.

Q. How soon after that was it that you struck the scow?

A. It was almost right away.

Q. Almost immediately?

A. Almost immediately.

Q. How long is the "Indianapolis"?

A. I believe that she is—I don't remember.

CAPTAIN PENFIELD: One hundred eighty feet long.

Q. (Mr. Stedman). When you stopped, after striking the scow, could you see the scow?

A. No sir, she disappeared.

Q. Out of sight in the fog?

A. Yes.

Q. It was quite foggy?

A. Yes, pretty foggy.

Q. Before you saw the "Klickitat" alongside of you the "Indianapolis" was going at her regular rate of speed?

A. She was going very slow.

Q. She had gone very slowly after she had left the dock?

A. She was not going full speed at any time, as far as I understand.

Q. She was not going full speed at any time as far as you understand?

A. No sir.

Q. You don't know what time this happened?

A. No sir, only what I heard. I didn't take any time.

(Witness excused).

CHRIS LARSEN, produced as a witness on behalf of Respondent, being first duly cautioned and sworn, testified as follows:

Q. (Mr. Stedman). Mr. Larsen, where do you live?

A. 3811 North 13th Street, Tacoma, Washington.

Q. Who are you working for at the present time?

A. The Glacier Fish Company.

Q. You used to work for the Puget Sound Navigation Company?

A. Yes sir.

Q. How long ago was that—when did you quit there?

A. Well, I don't know what time I did quit on the "Indianapolis."

Q. Roughly, how long did you work for the Puget Sound Navigation Company?

A. The last time I worked there was last summer I was working on the "Tacoma."

Q. Six or eight months ago or something like that?

A. Something like that, I don't know exactly.

Q. Now, you were employed by them and were on this vessel the "Indianapolis" the morning on which this collision took place?

A. Yes sir.

Q. Where were you?

A. I was supposed to be on the look-out on the port side.

Q. Were you there?

A. I was there.

Q. Where were you standing with reference to the stem of the boat?

A. Just about as close as I could get up on the port side.

Q. Were you on the same deck with Peter Wick, the same deck that he was on?

A. Yes.

Q. The upper deck on that boat runs away out towards the stem?

A. Not quite.

Q. It runs pretty well out?

A. Pretty well out.

Q. How far were you from Mr. Wicks?

A. About six or eight feet across I guess.

Q. Do you remember of the "Indianapolis" coming into collision with the scow that morning?

A. Yes.

Q. As a matter of fact, there was some lumber flying around in your neighborhood?

A. Yes sir.

Q. What was the first you heard or saw or how did you become conscious that there was something out there in front of you?

A. The first I heard I heard one whistle.

Q. You heard one whistle?

A. One tow boat whistle, and then I knew there was something. That was all I heard.

Q. How long was that before the collision occurred?

A. Well, that is hard to tell; it seems to me it was somewhere around one or two minutes—of course it is hard to tell.

Q. I don't suppose you know anything about what signals were given to the engine room on the "Indianapolis"?

A. I don't know anything about that sir.

Q. Do you know whether the boat slowed down before you were struck?

A. The boat slowed down.

Q. What makes you think that?

A. I could feel it when I was standing on the deck.

Q. Now, just what do you mean by saying that you could feel it?

A. Well, a man can easily feel that when he is on anything moving fast, when it slows down.

Q. When you say you saw this, what did you see first—did you see the tow boat?

A. I saw the tow boat.

Q. Where was she when you saw her?

A. She was just about half past on the star-board bow when I seen the tow boat.

Q. How soon was that after you heard her whistle?

A. Well, it was between the neighborhood of one or two minutes, I can't say that for sure.

Q. How did this whistle sound, did it seem plain to you?

A. Well, just a kind of light whistle, the same as a lot of the tow boat whistles use.

Q. Did you hear it plainly.

A. Well, I didn't hear it—I can't say I heard it very plain, but I heard it that is about all.

Q. But you only heard one set of them?

A. That is all I heard.

CROSS EXAMINATION

Q. (Mr. Stedman). Did you report it when you heard it?

A. No sir.

Q. You thought it was sufficiently loud for those in the pilothouse to hear it just as well as you—where was the "Klickitat" when you first saw her—where was the tow boat when you first saw her?

A. I just about saw the stern of the tow boat passing on the starboard side.

Q. The first you saw here was when you were right aboard her practically—you were on the port side?

A. Yes.

Q. And you saw the stern of the "Klickitat" passing on your starboard and then you were taking crossing courses?

A. Then I saw the tow line.

Q. You ran right across the tow line?

A. And then I knew there was something coming and I looked on and I saw the white water first and then I saw the scow.

Q. Did you strike the scow—whereabouts?

A. Well, it looked to me like we struck about one corner of her.

Q. And you cut off a wedge shaped sliver off her?

A. That was the way it looked to me; I don't know for sure.

Q. You were on the port side and you went to the rail when you struck, to see what happened?

A. I just grabbed hold of the railing to be sure to stay there.

Q. So that you would be sure that you would stand up for?

A. Yes.

Q. And you looked over the rail and you watched the scow as you sliced off the corner?

A. Yes.

Q. And then the scow passed out of sight before you stopped?

A. Well, it was foggy and I didn't see where the scow went to.

Q. Did you go right ahead towards Tacoma?

A. We stopped after we passed the scow.

Q. To see what was the trouble with the "Indianapolis"?

A. And then the Captain sent me down to see if the boat was damaged.

Q. To see if the "Indianapolis" was damaged?

A. Yes.

Q. And you found that she was not hurt?

A. She was all right.

Q. And then you went ahead?

A. Then she went ahead.

Q. Do you know what time you arrived in Tacoma?

A. No. It must have been about the same as usual. I don't know. When it was foggy we used to be kind of short of time.

Q. About the usual time?

A. Well, our usual time was one hour and forty minutes, but in foggy weather we lost out about five or ten minutes.

(Witness excused).

SAMUEL THORN, produced as a witness on behalf of Respondent, being first duly cautioned and sworn, testified as follows:

Q. (Mr. Robinson). You are a marine engineer, are you not?

A. Yes sir.

Q. In the employ on the Puget Sound Navigation Company?

A. Yes sir.

Q. How long have you had a license?

A. About twenty years.

Q. You were the first assistant engineer on the "Indianapolis" on the morning when the collision occurred?

A. Yes sir.

Q. You were on duty at that time?

A. Yes.

Q. Did you feel the shock of the impact?

A. Yes.

Q. What were your engines doing at the time?

A. We were backing.

Q. Backing?

A. Yes.

Q. What had been your last previous signal before the backing signal?

A. To stop.

Q. How long before the backing signal was the stop signal, do you think?

A. Probably a minute.

Q. And how long had you been backing?

A. We had been backing about a half a minute.

Q. These are approximations?

A. Something like that; that is an approximation.

CROSS EXAMINATION

Q. (Mr. Stedman). Did you see the "Klickitat" at all from where your station was?

A. No.

Q. You would not say that Captain Penfield was in error when he said awhile ago that he had been backing probably five or six seconds when the impact came?

A. No sir.

Q. You certainly had not lost your headway when the impact came?

A. No sir.

Q. How long after the impact was it that you came to a stop before you got the signal to go ahead?

A. After the impact?

Q. Yes.

A. I think about two minutes.

Q. You kept a log didn't you?

A. Yes.

Q. Have you got that with you?

MR. ROBINSON: Yes.

THE WITNESS: The log will show.

MR. ROBINSON: The pilothouse log is also here if you want to use it.

Q. (Mr. Stedman). You are testifying from your memory as refreshed from the log?

A. Yes.

Q. (Mr. Robinson). You made those entries yourself?

A. I made those entries myself.

Q. At the time?

A. Yes.

MR. ROBINSON: That is all.

HERE THE RESPONDENT RESTS.

GUS SMITH, produced as a witness on behalf of Libellant in Rebuttal, being first duly cautioned and sworn, testified as follows:

Q. (Mr. Stedman). State your full name.

A. Gus Smith.

Q. And you and your wife are the owners of the "Klickitat"?

A. Yes.

Q. What power engine has she?

A. Seventy-five horsepower.

Q. How long is she?

A. Forty-six feet.

Q. She is used and was used in towing in October, 1916?

A. Yes sir.

Q. What kind of a whistle did she have?

A. Well, just the same as any other gas boat engine.

Q. It could be heard well, could it?

A. Yes.

Q. Was she equipped with lights?

A. Yes.

(Witness excused).

HERE BOTH SIDES REST AND THE TESTIMONY IS CLOSED.

ORAL DECISION BY THE COURT

THE COURT: I do not think this rule Sixteen applies to the "Klickitat" in this case, and I do not think that the circumstances as they have been detailed really bring the "Klickitat" within the rule.

The testimony shows, as I recollect it—and I do not think there is any difference in that—that the master of the "Indianapolis" heard the whistle of the tug with the tow and recognized it. The "Klickitat" was recognized by the look-out on the "Indianapolis"—and the master of the "Klickitat" likewise noticed the "Indianapolis" coming out of the fog; if there had been a collision between the tug itself and the "Indianapolis" it would be an entirely different proposition.

But here we have the "Klickitat" with the scow and the other floats, and the master of the "Indianapolis" advised of just what he was meeting by the signals that were given and likewise by the look-out; the master of the "Indianapolis," as has

been admitted, was going at an immoderate speed and after the signal to stop was given a minute elapsed before the signal to reverse was given, as testified to by the marine engineer.

I do not find anything in the facts disclosed which would charge the master of the "Klickitat" with an omission of duty, and I think that the Court must find that the fault is with the "Indianapolis," and that will be the order.

Indorsed: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 7, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

STATE OF WASHINGTON, COUNTY OF
KING—ss.

O. D. Houchen, being first duly sworn, on his oath, deposes and says:

That he is Master of the Gasoline Tow Boat "Klickitat," of Port Blakely, and has been such for more than five years.

That he left Port Blakely on October 20, 1916, at 4:40 A. M. That the scow "Dorothy D" was in tow with two floats, eighty feet long astern of said "Dorothy D." That said scow "Dorothy D." is 30x119 feet.

That the weather was clear. That affiant could see Alki Light at all times after leaving Blakely until he arrived off the buoy at Duwamish Head,

at about 6:40 A. M. at which time it was dawning. That when affiant passed Blakely Rocks to the Northerly of said Blakely Rocks affiant took a course, by the compass on the "Klickitat," of North-east by East one-half East, which, with the tow and the run of the tide, would bring affiant directly into Pier No. 2 of the Port of Seattle, to which pier affiant was bound with said tow. That said floats astern of said tow were thereafter to be taken by affiant to the plant of the Skinner & Eddy Corporation in Massachusetts Street.

That affiant passed the buoy to the South of the buoy about one-half way between the buoy and Duwamish Head. Affiant took such course so as to avoid the course of passing steamers which take a course entering and leaving the harbor of Seattle outside or to the North of said buoy. When affiant was about abreast said Duwamish Head and about half way between said Duwamish Head and said buoy, the weather thickened, and shortly became very foggy; still it was not so thick but that affiant could clearly distinguish the scow astern the said "Klickitat" three hundred feet. That as soon as said weather became thick, affiant sounded the usual fog signals of one long and two short blasts, indicating that a steamer had a tow. That said signals were sounded every thirty seconds. That affiant heard whistles which after events developed were from the Steamship Indianapolis, sounded from the

small whistle of said Steamer Indianapolis. About four or five minutes before she came in sight, affiant heard seven or eight whistles from said Steamer Indianapolis. That at about seven minutes after seven, affiant saw the Indianapolis about three hundred feet distant, almost dead ahead going very fast. The Indianapolis gave a passing signal of two whistles indicating that she would pass to affiant's starboard. Just before the Indianapolis gave such passing signal, affiant had given a fog signal of one long and two short blasts. Affiant immediately answered the signal of the Indianapolis by two whistles and put his helm hard a-starboard. The Indianapolis almost immediately was alongside and only about thirty feet distant going very fast. Affiant saw the mate who was stationed on the bow of the Indianapolis signal to the officer upon the bridge to go to port, but the Indianapolis did not turn to port but cut affiant's tow-line 200 feet astern of the "Klickitat" and struck the scow "Dorothy D." on the port bow about seven feet from the port forward corner cutting the scow to a length of about seventy feet and spilling a large portion of the load of said scow into the water.

That said scow was loaded with 144,000 feet of lumber consigned to the Kennicott Copper Corporation, at Kennicott, Alaska, and was to be delivered by affiant to the Steamer "Eureka," then in the Port of Seattle. That after cutting through

said scow, the Indianapolis cut the rope attaching the first float to said scow, which was attached to the port stern corner of said scow and turned said float upside down.

That said Steamship Indianapolis did not back or make any inquiry as to the condition of the said "Klickitat" or her tow or, in any manner, offer to render assistance, but continued without interruption upon her course. In fact, affiant never saw said Indianapolis after she hit the scow.

Affiant immediately backed, taking in the tow line and went alongside the wreckage and stood by until the fog raised, sounding fog signals to prevent the danger of other vessels running into said scow or wreckage.

That at about 8:15 the fog had risen to such an extent that there was no danger of collision of other vessels with said wreckage, and affiant left for Seattle to report said accident, and made report of Port Blakeley and also requested report to be made to the Steamboat Inspectors.

Affiant believes that from 75,000 to 80,000 feet of lumber was torn off of the scow by said collision.

Affiant then proceeded with another tug to surround said floating lumber with boom-sticks, and subsequently on the night of the 20th of October towed said floating lumber and said wrecked scow to Port Blakeley.

That a large portion of said lumber was broken

by said Steamship Indianapolis, and affiant cannot state how much lumber was lost until a tally has been made.

That affiant believes that the value of said scow is entirely lost, and that she is rendered useless, and hardly worth towing to port.

That affiant has aboard, as assistant, Charles Melgard, a thoroughly competent and able seaman.

O. D. HOUCHEN.

Subscribed and sworn to before me this 25th day of October, A. D. 1916.

ROSE E. MOHR.

Notary Public in and for the State of Washington, residing at Seattle.

(SEAL)

State of Washington, County of King—ss.

Charles Melgard, being first duly sworn, on his oath deposes and says:

That he, on the 20th day of October, 1916, was assistant to O. D. Houchen, master of the Klickitat, and was on board said Klickitat at the time of the collision between the scow Dorothy D. in tow of said tug Klickitat and the Steamship Indianapolis.

That affiant has carefully read the affidavit of O. D. Houchen, and all the statements contained in said affidavit are true, and affiant swears to the same as fully and completely as if they were set out in full herein.

CHAS. MELGARD.

Subscribed and sworn to before me this 9th day of November, A. D. 1916.

L. B. STEDMAN.

Notary Public in and for the State of Washington, residing at Seattle.

Indorsed: Libelant's exhibit No. 1. Filed March 27, 1918. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy.

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

IN ADMIRALTY

No. 3501

FINAL DECREE

CANYON LUMBER COMPANY,

Libelant.

vs.

STEAMSHIP "INDIANAPOLIS", her engines,
boilers, tackle, apparel and furniture,

Respondent.

PORT BLAKELEY MILL COMPANY, a cor-
poration,

Intervening Libelant.

PUGET SOUND NAVIGATION COMPANY, a
corporation,

Claimant.

TUG "KLUCKITAT", her engines, boilers, tackle,
apparel and furniture,

Respondent on Cross-Libel of Claimant.

GUS SMITH and CECILIA SMITH, his wife,

Claimants of "Klickitat."

This cause coming on to be heard upon the ap-
plication of the libelant and intervening libelant,
Port Blakeley Mill Company, and Gus Smith and
Amelia Smith, claimants of the Tug Klickitat, said
libelant and said intervening libelant being repre-
sented by Livingston B. Stedman, of the firm of
Hastings & Stedman, proctors for said libelant and

intervening libelant, and claimants, Gus Smith and Amelia Smith, being represented by Roy L. Cadwallader, their proctor, and the Puget Sound Navigation Company, claimant and petitioner, being represented by J. S. Robinson, of the firm of Bronson, Robinson & Jones, its proctors, and the Court being duly advised in the premises.

It is here and now ORDERED, ADJUDGED AND DECREED that libelant, Canyon Lumber Company, do have judgment against the claimant, Puget Sound Navigation Company, and Joshua Green and C. H. J. Stoltenberg, its sureties upon its bond to the marshal in the sum of \$2,450.60, together with its costs herein to be taxed by the clerk.

It is further ORDERED, ADJUDGED AND DECREED that the Port Blakeley Mill Company do have and recover judgment of and from said claimant, Puget Sound Navigation Company, in the sum of \$292.10, together with its costs herein to be taxed by the clerk.

It is further ORDERED, ADJUDGED AND DECREED that the libel of Puget Sound Navigation Company against the Steamer "Klickitat" be and it hereby is dismissed with costs to be taxed in favor of Gus Smith and Cecilia Smith, claimants of said tug "Klickitat."

To each and all of the above and foregoing, the claimant and petitioner, Puget Sound Navigation

Company, excepts, and its exceptions are hereby allowed.

Done in open court this 1st day of April, A. D. 1918.

JEREMIAH NETERER,

Judge.

O. K. as to form: J. S. Robinson.

Indorsed: Final Decree. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Apr. 1, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

IN ADMIRALTY

No. 3501

CANYON LUMBER COMPANY,
Libelant.

vs.

STEAMSHIP "INDIANAPOLIS," Etc.,
Respondent.

PORT BLAKELY MILL CO.,
Intervening Libelant.

PUGET SOUND NAVIGATION COMPANY,
Claimant.

TUG "Klickitat," Etc.,
Respondent on Cross-Libel of Claimant.

GUS SMITH and CECILIA SMITH, his wife,
Claimants of "Klickitat."

NOTICE OF APPEAL

To the Canyon Lumber Company, a corporation,
Libelant herein, and to Hastings & Stedman, its
proctors; and to the Port Blakely Mill Com-
pany, Intervening Libellant, and to Hastings
& Stedman, its proctors; and to Gus Smith and
to Cecilia Smith, his wife, Claimants of the
"Klickitat," and to Roy L. Cadwallader, their
proctor; and to the American Surety Company

of New York, surety on the release bond of the "Klickitat".

You and each of you will please take notice that the Puget Sound Navigation Company, a corporation claimant of the S. S. Indianapolis and Cross-Libellant against the tug "Klickitat," hereby appeals from the final decree made and entered herein on April 1, 1918, in favor of the Libellant and against the said Puget Sound Navigation Company, and Stipulators for the release of the Indianapolis, in the sum of \$2450.60, together with costs, and in favor of the Intervening Libellant against the said Puget Sound Navigation Company and the said Stipulators in the sum of \$292.10 with costs, which said decree also ordered the dismissal of the Cross-Libel of the Puget Sound Navigation Company against the tug "Klickitat", with costs, in favor of Gus Smith and Cecilia Smith, Claimants of the said tug, and from each and every part of the said decree to the United States Circuit Court of Appeals for the Ninth Circuit.

BRONSON, ROBINSON & JONES,
Proctor for Puget Sound Navigation
Co., Claimant of S. S. Indianapolis and
Cross Libellant against "Klickitat"

Due service of the foregoing notice of appeal, after the filing of the same in the office of the clerk

of the above entitled court, is hereby admitted this
7th day of June, 1918.

HASTINGS & STEDMAN,
Proctor for Canyon Lumber Co., Libel-
lant, and Port Blakely Mill Co., Inter-
vening Libellant

ROY L. CADWALLADER,
Proctor for Gus Smith and Cecilia
Smith, Claimants of the "Klickitat"

AMERICAN SURETY COMPANY OF
NEW YORK,

By LIVINGSTON STEDMAN,
Resident Vice-President.

Indorsed: Notice of Appeal. Filed in the U.
S. District Court, Western Dist. of Washington,
Northern Division, June 7, 1918. Frank L. Crosby,
Clerk. By Ed M. Lakin, Deputy.

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

IN ADMIRALTY

No. 3501

CANYON LUMBER COMPANY,
Libellant.

vs.

STEAMSHIP "INDIANAPOLIS," Etc.,
Respondent.

PORT BLAKELY MILL CO.,
Intervening Libellant.

PUGET SOUND NAVIGATION COMPANY,
Claimant.

TUG "KLICKITAT," Etc.,
Respondent on Cross-Libel of Claimant.

GUS SMITH and CECILIA SMITH, his wife,
Claimants of "Klickitat."

ASSIGNMENT OF ERRORS

Comes now the above named Puget Sound Navigation Company, a corporation, Claimant and Cross-Libellant in the above entitled cause, and says that in the record and proceedings in said cause and in the decree made and entered therein on the first day of April, 1918, there are manifest errors in the following particulars:

I.

That the said court erred in finding and decreeing that the S. S. Indianapolis was solely at fault, and in failing to hold that the tug Klickitat was also guilty of faults contributing to the collision.

II.

That the court erred in entering a decree against the Puget Sound Navigation Company, Claimant of the S. S. Indianapolis for the entire damage suffered by the Libellant and Intervening Libellant, and erred in failing to enter a decree assessing one-half of said damage against the Claimants of the "Klickitat."

WHEREFORE, the Claimant and Cross-Libellant, the Puget Sound Navigation Company, prays that the said decree may be reversed, modified and corrected in the particulars herein set out, and such decree entered therein as ordered to have been entered by the said District Court.

BRONSON, ROBINSON & JONES,
Proctors for said Puget Sound Navigation Co.,

Service of the foregoing assignments of errors and receipt of copy thereof, admitted this 7th day of June, 1918.

HASTINGS & STEDMAN,
Proctors for Canyon Lumber Co., and
Port Blakely Mill Co.,

ROY L. CADWALLADER,
Proctor for Gus Smith and Cecilia
Smith, Claimants of the "Klickitat"

Indorsed: Assignment of Errors. Filed in the
U. S. District Court, Western Dist. of Washington,
Northern Division, June 7, 1918, Frank L. Crosby,
Clerk. By Ed M. Lakin, Deputy.

*United States District Court, Western District of
Washington, Northern Division.*

No. 3501

CANYON LUMBER COMPANY,

Libelant.

vs.

STEAMSHIP "INDIANAPOLIS," Etc.,

Respondent.

PORT BLAKELY MILL CO.,

Intervening Libelant.

PUGET SOUND NAVIGATION COMPANY,

Claimant.

TUG "KLICKITAT," Etc.,

Respondent on Cross-Libel of Claimant.

GUS SMITH and CECILIA SMITH, his wife,

Claimants of "Klickitat."

PRAECIPE FOR APOSTLES ON APPEAL

To the Clerk of the Above Entitled Court:

You will please prepare, certify, print and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the Apostles on Appeal in the above entitled cause, pursuant to the rules of the said Circuit Court of Appeals, including in such apostles the following:

1. A caption exhibiting the proper style of the Court and the title of the cause.

2. The stipulation re. record on appeal and

statement attached thereto, filed in the records in cause on the 7th day of June, 1918.

3. The transcript of evidence and oral decision of the Court attached to the stipulation and statement mentioned in the preceding paragraph, together with any and all exhibits offered in evidences.

4. The final decree made and filed April 1, 1918.

5. Notice of Appeal with admission of service, filed June 7, 1918.

6. Assignment of Errors with admission of service, filed June 7, 1918.

BRONSON, ROBINSON & JONES,
Proctors for Puget Sound Navigation
Co., Claimant of S. S. Indianapolis and
Cross Libellant against "Klickitat"

Indorsed: Praeceptum for Apostles on Appeal.
Filed in U. S. District Court, Western Dist. of
Washington, Northern Division, June 10, 1918.
Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*United States District Court, Western District of
Washington, Northern Division.*

No. 3501

CANYON LUMBER COMPANY,
Libelant.

vs.

STEAMSHIP "INDIANAPOLIS," Etc.,
Respondent.

PORT BLAKELY MILL CO.,
Claimants of "Klickitat."
Intervening Libelant.

PUGET SOUND NAVIGATION COMPANY,
Claimant.

TUG "KLICKITAT," Etc.,
Respondent on Cross-Libel of Claimant.

GUS SMITH and CECILIA SMITH, his wife,

**CERTIFICATE OF CLERK U. S. DISTRICT COURT TO
TRANSCRIPT OF RECORD**

*United States of America, Western District of
Washington, ss.*

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify this printed transcript numbered from 1 to 82, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing

of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitutes the record on appeal to the said Circuit Court of Appeals for the Ninth Circuit from the District Court of the United States for the Western District of Washington.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Appellant for the preparation, certification and printing of the record on appeal issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making record, certificate or return, 140 folios at 15c	\$21.00
Certificate of Clerk to transcript of record— 4 folios at 15c60
Seal to said Certificate20
Certificate of Clerk to original Exhibit—3 folios at 15c45
Seal to said Certificate20
Statement of cost of printing said transcript of record, collected and paid	105.00
Total	<u>\$127.45</u>

I hereby certify that the above cost for prepar-

ing and certifying record amounting to \$127.45, has been paid to me by Proctors for Appellant.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 1st day of July, 1918.

FRANK L. CROSBY, *F. M. Haushberg*
Clerk United States District Court.

(SEAL) *By Ed M. Lakin,*
Deputy

*United States District Court, Western District of
Washington, Northern Division.*

No. 3501

CANYON LUMBER COMPANY, Libelant,

vs.

STEAMSHIP "INDIANAPOLIS," Etc.,
Respondent,

PORT BLAKELY MILL CO.,
Intervening Libelant.

PUGET SOUND NAVIGATION COMPANY,
Claimant.

TUG "KLUCKITAT," Etc.,
Respondent on Cross-Libel of Claimant.

GUS SMITH and CECILIA SMITH, his wife,
Claimants of "Klickitat."

CITATION OF APPEAL

The President of the United States to Canyon Lumber Co., a corporation, Libelant herein; and to Hastings & Stedman, its Proctors; and to the Port Blakely Mill Company, Intervening Libelant; and to Hastings & Stedman, its Proctors; and to Gus Smith and Cecelia Smith, and to Roy L. Cadwallader, their Proctor, Greeting:
You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, California, within thirty (30) days from the date hereof, pursuant to an appeal to the said

Court duly filed in the office of the Clerk of the United States District Court for the Western District of Washington, Northern Division, wherein the said Puget Sound Navigation Company, a corporation, is Appellant, and you, the said Canyon Lumber Company and the said Port Blakely Mill Company and Gus Smith and Cecilia Smith are Appellees, then and there to show cause, if any there be, why the decree of the United States District Court for the Western District of Washington, Northern Division, in the above entitled cause, dated April 1, 1918, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States of America, this 8th day of June, 1918.

(SEAL)

JEREMIAH NETERER,

Judge of the United States District
Court of the Western District of Wash-
ington.

Due service of the within Citation after the filing of the same in the office of the Clerk in the above entitled Court is hereby admitted this 8th day of June, 1918.

HASTINGS & STEDMAN,

Proctors for Canyon Lumber Co., and
Port Blakely Mill Co.

ROY L. CADWALLADER,
Proctor for Gus Smith and Cecelia
Smith.

Indorsed: Citation on Appeal. Filed in the
U. S. District Court, Western Dist. of Washing-
ton, Northern Division, June 8, 1918. Frank L.
Crosby, Clerk. By Ed M. Lakin, Deputy.